

the Respondent will be obliged, in order to protect its patent, to bring any other suit in the Sixth or any other Circuit, necessarily depends upon developments in the future. Respondent has no present intention except to do whatever is reasonably necessary to protect its patent rights. It is probably true, as alleged by the Petitioner, that a declaratory judgment suit against The Bishop and Babcock Manufacturing Company can be filed only in the Northern District of Ohio where the Company's office and plant are located, but almost every small company like The Bishop and Babcock Manufacturing Company can be sued for a declaratory judgment only in the Judicial District where it has its office and plant. Certainly the fact that a small company has an office and plant only in one place would not be considered ground for a writ of certiorari in the United States Supreme Court.

While we do not see any importance to the statement in Petitioner's motion that "Respondent sells heaters coming under the Mayo patent involved in suit between Petitioner and Respondent through The Bishop and Babcock Sales Corporation, a separate corporate entity and a corporation of New York", the fact is that this statement is untrue. Bishop and Babcock Sales Corporation is a very small subsidiary of Respondent which handles in New York and Chicago another product often sold for use in building construction in those localities, but does not sell or handle automobile heaters.

Before the present suit was brought by the Petitioner in the United States District Court for the Northern District of Ohio, the Mayo patent application was in litigation between the Petitioner and the Respondent in the United States Patent Office, the Board of Appeals of the United States Patent Office, and the United States Court of Customs and Patent Appeals for a period of almost six years, from 1937 to 1943, when the patent in suit was issued to

the Respondent as the result of the decision of the United States Court of Customs and Patent Appeals, which affirmed the decisions of the patent office tribunals. The Petitioner, on September 21, 1945, filed the present suit for declaratory judgment in the District Court, and a judgment in favor of the Respondent was entered by the District Court on June 10, 1947. The Petitioner appealed to the United States Circuit Court of Appeals for the Sixth Circuit, which, on May 3, 1948, affirmed the judgment of the District Court. A motion for rehearing was filed by the Petitioner in the Circuit Court of Appeals, and on June 2, 1948, the Circuit Court of Appeals reversed the judgment of the District Court as to one claim of the patent in suit, and otherwise again affirmed the judgment of the District Court. The Petitioner then filed in this Court its petition for a writ of certiorari, which was denied by this Court on October 11, 1948. Thereafter the Petitioner filed a petition for rehearing, and that petition for rehearing was denied by this Court on November 15, 1948. Now, about twelve years after the litigation between the Petitioner and the Respondent originally started in the Patent Office, the Petitioner files a motion for leave to file a second petition for rehearing, which alleges no new ground for the granting of a writ of certiorari and no new fact of consequence. We submit that the litigation between the Petitioner and the Respondent should now be finally ended by the denial by this Court of the Petitioner's motion for leave to file a second petition for rehearing.

Respectfully submitted,

JOHN A. DIENNER,

JOHN T. SCOTT,

Counsel for Respondent.

STATE OF OHIO, }
 CUYAHOGA COUNTY. } ss.

Edward L. Mayo, being first duly sworn, upon his oath deposes and says that he is an officer, to wit, the President, of Respondent, The Bishop and Babcock Manufacturing Company, an Ohio corporation with its office and place of business at Cleveland, Ohio; that affiant has read the above and foregoing Memorandum, knows the contents thereof and that the allegations of fact therein contained are true, as he verily believes.

EDWARD L. MAYO.

Sworn to before me by the said Edward L. Mayo and by him subscribed in my presence this 20th day of May, 1949.

ROBERT W. WHEELER,

(SEAL)

Notary Public.

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